IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25-08-2005

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA

W.P.NO.31278 OF 2004

2980, Kanagapuram Primary
Agricultural Co-operative
Bank Limited, rep. by its
Secretary, Kanagapuram,
Vellode Via, Erode Taluk,
Erode District. .. Petitioner

Vs.

1. The District Registrar,
O/o. Registration,
Karungalpalayam,
Erode.

2. The Sub Registrar,
O/o. Registration, Perundurai
Erode District. .. Respondents

Petition filed under Article 226 of the Constitution of India for the issuance of writ of certiorarified mandamus to call for the entire records in so far relate to impugned order passed by the 2nd respondent in his proceedings I.No.36/2004, dated 11.10.2004 and quash the same, consequently, directing the respondents to return the original sale deed registered on 7.5.2004 in Document No.P200400056 (Book 1), dated 7.5.2004.

For Petitioner : Mr.C. Prakasam

For Respondents : Mr.S. Gomathinayagam
Special Govt. Pleader

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J U D G M E N T

The petitioner Society, which is a Primary Agricultural Co-operative Bank registered under the Co-operative Societies Act,

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has filed this writ petition for quashing the order dated 11.10.2004 passed by the second respondent in proceedings I.No.36/2004 and directing the respondents to return the original sale deed registered on 7.5.2004 as pending document No.56 of 2004.

2. The brief facts are as follows :-

An arbitration proceedings was initiated against the former Secretary of the petitioner society, as he had misappropriated the Bank's funds, and an award was passed. Since such amount had remained unpaid, the petitioner filed application under Rule 126 of the Tamil Nadu Co-operative Societies Rules, 1988 for attachment and sale of immovable property belonging to such employee. The petitioner Bank itself participated in the auction and it was the highest bidder. Auction sale in favour of the petitioner was confirmed by the Deputy Registrar of Co-operative Societies under Rule 129. The document in favour of the petitioner was presented before the second respondent on 7.5.2004 for registration. An application under section 51 of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as "the Act") was filed claiming exemption on payment of stamp duty in accordance with the notification issued under Section 51 of the Tamil Nadu Co-operative Societies Act. However, under the impugned order, the second respondent indicated that the document in question was not entitled for exemption from payment of stamp duty.

3. It is the contention of the petitioner that in accordance with Section 51 of the Act, notification dated 10.9.1966 had been issued, the second respondent should have granted exemption.

4. A counter affidavit has been filed on behalf of the respondents. In such counter affidavit it has been stated that the Tamil Nadu Co-operative Societies, 1983 is a State Act and the Indian Stamp Act, 1899 is a Central Act, and, therefore, Section 51 of the Tamil Nadu Co-operative Societies Act cannot override the provisions of the Indian Stamp Act, and unless there is specific exemption accorded to the class of documents under Section 9(1)(a) of the Indian Stamp Act, the instrument in question is liable to stamp duty as per Section 3 read with Article 23 of Schedule-1 of the Indian Stamp Act. It is further stated that notification dated 29.6.1966 is not applicable to the present case as, in the present case, the purchase of the property is not relating to the business of the petitioner's society. A plea is also taken that the petitioner has not exhausted the remedies available under Sections 40 and 56(1) of the Indian Stamp Act, and, therefore, the writ petition under Article 226 of the Constitution is not maintainable.

5. The provisions contained in Section 51 of the Tamil Nadu Co-operative Societies Act is to the following effect :-

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"51. Powers to exempt from stamp duty and registration fee.- The Government, by notification,may, in the case of any registered society or class of registered societies, remit-

(a) the stamp duty not being the stamp duty referred to in clause (a) of subsection (2) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), with which, under any law for the time being in force, on instruments executed by or on behalf of or in favour of a registered society or by an officer or member and relating to the business of such society or any class of such instruments or decisions, awards or orders of the Registrar or arbitrators under this Act are respectively chargeable; and

(b) any fee payable under the law of registration for the time being in force."

6. The Tamil Nadu Co-operative Societies Act, 1983 has repealed the Madras Co-operative Societies Act, 1961. A notification in exercise of powers conferred by Section 43(1) of the Madras Co-operative Societies Act, 1961, was published in the Gazette on 10.9.1966. The relevant portion of such notification is to the following effect :-

"

AGRICULTURE DEPARTMENT

Remission of stamp duty Chargeable in respect of certain instruments, etc.

(G.O.Ms.No.2179, Agriculture (Co-operation), 29th June, 1966)

II-1 No.3082 of 1966.

In exercise of the powers conferred by sub-section (1) of section 43 of the Madras Co-operative Societies Act, 1961 (Madras Act 53 of 1961) and in supersession of the Notification II-1 No.4819 of 1963, dated the 12th September 1963, published at page 2185 of Part II-Section 1 of the Fort St. George Gazette, dated the 18th September 1963, the Governor of Madras hereby remits in the case of all registered societies the stamp duty (not being the stamp duty referred to in clause 9a) of sub-section (2) of section 9 of the Indian Stamp Act, 1899 (Central Act II of 1899), chargeable under the said Indian Stamp Act, in respect of -

(1) instruments executed by or on behalf of any such society, or by an officer or member thereof and relating to the business of such society:

Provided further that in the case of a sale-deed executed in respect of a house, constructed by the Co-operative House Construction Societies, the remission

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shall not operate unless such deed is in favour of a member to whom the property conveyed was allotted and a period of not less than has elapsed since the date of such allotment.

Provided further that in the case of a sale deed in favour of any such society, the remission shall not operate unless, the vendor, has been a member of such society continuously for a period of not less than two years immediately before the date of the execution of the sale deed;

(2) decisions, awards or orders of the Registrar or the arbitrators under the Madras Co-operative Societies Act (Madras Act 53 of 1961)."

7. In the impugned order the second respondent has given four reasons for not accepting the request of the petitioner regarding exemption. The first reason for not accepting the request of the petitioner regarding exemption is as follows :-

> " a) Notification issued in G.O.Ms.No.2179/ Cooperation /dt: 29.06.1966 exempts from payment of stamp duty in respect of "instruments executed by or on behalf of any society or by an officer or member thereof and relating to the business of such society." In the instant case the deed in question was not executed by the Cooperative Society but by the Department of Cooperation."

8. A perusal of the first reason indicates that Respondent No.2 did not accept the submission on the ground "In the instant case the deed in question was not executed by the Co-operative Society but by the Department of Co-operation." However, in the counter affidavit a new stand is taken by Respondent No.2 by highlighting that purchase of the property in question was not relating to the business of the petitioner's society. Neither the reasons given in paragraph (a) of the impugned order nor the new stand taken by Respondent No.2 in the counter affidavit is acceptable in law. It is obvious that auction was held pursuant to the award relating to the dues of the society. The document in question was in favour of the society and the document was executed by an officer, it is covered under the provisions contained under Section 51 of the Act and the notification, which was issued in 1966 in accordance with the similar provisions under the Madras Co-operative Societies Act, 1961. Since the earlier Act has been repealed and replaced by a new Act, it is obvious that any notification issued under the old Act shall continue to have force unless otherwise specifically so indicated in the new Act. It is worthwhile to mention that in the counter affidavit, Respondent No.2, possibly realising the error

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committed in paragraph (a) of his impugned order, has now come out with a new stand that the purchase was not relating to the business of the petitioner's society. It is difficult to fathom the logic of such stand taken in the counter. The Society is obviously an agricultural bank and has the right to recover its dues. The auction sale was pursuant to the award. So it is obvious that the sale of the property was in connection of the business of the Society, even if such expression is construed in a narrow sense. The main ground for rejection of the exemption is therefore vulnerable.

9. The next ground indicated in the impugned order is to the following effect :-

> "b) Item No.32 of the Notification issued in G.O.Ms.No.1224/Revenue dated: 25.4.1964 provides as under:-
>
> > "Certificate of sale granted to the purchaser of any property sold by public auction by a Registrar of Cooperative Societies in the said state - Duty reduced to the amount of duty chargeable on a similar Certificate granted by a civil or Revenue Court."
>
> In the instant case on a whole reading of the instrument in question it is found that the instrument is nothing but an "Absolute sale deeds"."

10. On the face of it, such ground indicated by Respondent No.2, appears to be wholly untenable. Even it is difficult to understand as to what Respondent No.2 wanted to convey by indicating this as a ground for rejection. To be fair to Respondent No.2, it must be indicated that he has not tried to repeat this stand in the counter affidavit, obviously because he himself was satisfied about the error in his order.

11. The 3rd and 4th grounds indicated in the impugned order are to the following effect :-

> " c) The Tamilnadu Co-operative Societies Act, 1983 is a state law and Section 51 ibid cannot override the Central Law. Further Registration Act, 1908 is a special law. The Co-operative Act being a General State law cannot override the Central Law, special Law and fiscal law Viz. the Indian Stamp Act, 1899.
>
> d) The executive order of the Government cannot override the provisions of the Act unless a specified notification under Section 9(1)(a) of the Indian Stamp Act, 1899 and Section 78(A) of the Registration Act remitting stamp duty and registration fees are issued."

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12. Section 9 of the Indian Stamp Act is to the following effect :-

> "9. Power to reduce, remit or compound duties.- (1) The Government may, by rule or order published in the Official Gazette,-
>
> (a) reduce or remit, whether prospectively or retrospectively, in the whole or any part of the territories under its administration, the duties with which any instruments or any particular class of instruments or any of the instruments belonging to such class, or any instruments when executed by or in favour of any particular class of persons, or by or in favour of any members of such class, are chargeable, and
>
> (b) provide for the composition or consolidation of duties of polices of insurance and in the case of issues by any incorporated company or other body corporate or of transfers (where there is a single transferee, whether incorporated or not) of debentures, bonds or other marketable securities.
>
> (2) In this section, the expression "the Government" means -
>
> (a) in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within entry 91 in List I in the Seventh Schedule to the Constitution, the Central Government:
>
> (b) save as aforesaid, the State Government."

13. Section 9 itself empowers the Government by rule or order to reduce or remit the duties with which on any instruments when executed by or in favour of any particular class of persons. As per section 9(2), the expression "The Government" means in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and in relation to any other stamp duty chargeable under this Act and falling within entry 91 in List I in the Seventh Schedule to the Constitution by the Central Government and in respect of others the State Government. Entry 91 in List I in the Seventh schedule of the Constitution of India is "Rates of stamp duty in respect of bills of exchange, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts". It is thus obvious that the expression "The Government" refers to the State Government except in relation to stamp duty in respect of bills of exchange, cheques, promissory notes, bills of lading, letters of credit, policies of insurance, transfer of shares, debentures, proxies and receipts, and other

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stamp duty chargeable under the Act and falling within entry 91 in List I in the Seventh Schedule of the Constitution. The Respondent No.2 has wrongly assumed that by the Government notification, the State Government wanted to override the Central Law, namely,the Indian Stamp Act. As a matter of fact, a bare reading of the notification dated 29.6.1966 makes it clear that remission of stamp duty was in respect of stamp duty not being the stamp duty referred to in clause (a) of sub-section (2) of Section 9 of the Indian Stamp Act. Even otherwise the Indian Stamp Act is relatable to Concurrent List. The Tamil Nadu Co-operative Societies Act, 1983, which is a later Act, has received the assent of the President. If there is any repugnance between such Act and any provision of the Indian Stamp Act, the provisions of such later Act would prevail in view of the provisions contained in Articles 246 and 254 of the Constitution of India. Reference to the Registration Act, being a Special law, has no relevance in the present context as the stamp duty is payable under the Indian Stamp Act.

14. Apart from the above, it is obvious that the stamp duty payable on instruments not coming within Section 9(2)(a) is for the benefit of persons within the State concerned and if the State has passed any law or issued any notification making certain exemptions, it is not understood as to how a subordinate officer of a State could question the wisdom of the law passed by the State Government or question the validity of a notification issued by the State Government. Of course in the counter affidavit, Respondent No.2 has confined his contention only to the fact that the Tamil Nadu Co-operative Societies Act is a State law and cannot override the Central law, namely the Indian Stamp Act. As already noticed, in fact there is no contradiction and even assuming there is any, in view of Articles 246 and 254 of the Constitution, the provisions made by the State Government is required to be followed at least by the State officer.

15. An objection has been raised in the counter affidavit that the petitioner has not exhausted the alternative remedy. At the time of hearing of the writ petition, such objection has also been faintly urged by the Special Government Pleader appearing on behalf of Respondents 1& 2.

16. According to the respondents 1 and 2, namely, the Collector and the Sub Registrar, alternative remedy under Section 40 of the Indian Stamp Act was available. Section 40 refers to the Collector's power to stamp instruments impounded and is to the following effect :-

> "40. Collector's power to stamp instruments impounded.- (1) When the Collector impounds any instrument under section 33, or receives any instrument sent to him under section 38, sub-section (2), not being

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an instrument chargeable with a duty not exceeding twenty paise only or a mortgage of crop (Article 41(a) of Schedule I) chargeable under section 3 with a duty fifty paise or a bill of exchange or promissory note, he shall adopt the following procedure:-

(a) if he is of opinion that such instrument is duly stamped or is not chargeable with duty, he shall certify by endorsement thereon that it is duly stamped, or that it is not so chargeable, as the case may be;

(b) if he is of opinion that such instrument is chargeable with duty and is not duly stamped, he shall require the payment of proper duty or the amount required to make up the same, together with a penalty of five rupees; or if he thinks fit, an amount not exceeding ten times the amount of the proper duty or of the deficient portion thereof, whether such amount exceeds or falls short of five rupees:

Provided that, when such instrument has been impounded only because it has been written in contravention of section 13 or section 14, the Collector may, if he thinks fit, remit the whole penalty prescribed by this section.

(2) Ever certificate under Clause (a) of sub-section (1) shall for the purposes of this Act, be conclusive evidence of the matters stated therein.

(3) Where an instrument has been sent to the Collector under section 38, sub-section (2), the Collector shall, when he has dealt with it as provided by this section, return it to the impounding officer."

17. Section 40 refers to Sections 33 and 38. Section 33 obviously applies to instruments produced before the authorities to receive evidence and of course relates to completed documents. It has got no application to the present case. Section 38 refers to the procedure to be followed by the officer who impounds any instrument. When Respondent No.1, who is the authority to decide such matter under Section 40, himself is an opposite party and through the counter he has expressed certain opinion, it is futile to expect any other order from such authority. Therefore, pursuing the matter under Section 40 obviously would be an exercise in futility. Of course the jurisdiction under Chapter VI, and particularly under Section 56, is to be exercised by the Chief Controlling Revenue authority when the matter is brought to his notice in reference or can be exercised suo motu. It is of course true that a person can bring any matter to the notice of such authority, but it cannot be said that any right vests with any person to invoke jurisdiction under Chapter VI. Moreover, the question raised in the present case being a pure question of law, not pursuing the matter before any other authority, such as

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Collector under Section 40 or the Chief Controlling Revenue authority under Chapter VI, cannot be considered as an absolute bar for deciding the writ petition.

18. Law is quite well settled that existence of alternative remedy is not an absolute bar to the exercise of jurisdiction under Article 226 of the Constitution. In A.I.R. 1977 SC 1132 (STATE OF U.P. AND OTHERS v. M/s. INDIAN HUME PIPE CO. LTD.,) it was observed :-

> "4. Lastly, it was feebly argued by Mr. Manchanda that the High Court ought not to have entertained the writ petition and should have allowed the assessee to avail of the remedies provided to him under the U.P. Sales Tax Act, particularly when questions of fact had to be determined. In the instant case, the question as to what is the true connotation of the words "sanitary fittings" and whether the hume pipes manufactured and sold by the respondent were sanitary fittings within the meaning of that expression was a question of law and since the entire material on the basis of which this question could be determined was placed before the Sales Tax Officer and it pointed in one and only one direction, namely, that the hume pipes were not sanitary fittings and there was nothing to show otherwise, the High Court was justified in entertaining the writ petition. Moreover, there is no rule of law that the High Court should not entertain a writ petition where an alternative remedy is available to a party. ..."

19. In AIR 1979 SC 1889 (ASSISTANT COLLECTOR OF CENTRAL EXCISE v. JANSON HOSIERY INDUSTRIES) it was observed that the existence of alternative remedy is not an absolute bar to the relief under Article 226 where the alternative remedy is too dilatory or difficult to give quick relief.

20. Similarly it was observed in AIR 1961 SC 372 (CALCUTTA DISCOUNT CO. LTD. INCOME TAX OFFICER) that existence of alternative remedy cannot be construed as a bar where such remedy is ineffective or entails such delay that the applicant would be irreparably prejudiced, or subjected to length proceedings and unnecessary harassment.

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21. Similar views were expressed in AIR 1968 SC 13 (COLLECTOR OF CUSTOMS AND CENTRAL EXCISE v. BAVA, A.S.,).

22. In AIR 1961 SC 1506 (VENKATESWARAN A.V., COLLECTOR OF CUSTOMS, BOMBAY v. RAMCHAND SOBHRAJ, WADHWANI), it was observed that existence of alternative remedy cannot be considered as a bar where it is evident from the acts of statutory appellant or

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revisional authority that it may be futile to approach such authority for revising the impugned order.

23. The perusal of several decisions makes it clear that ordinarily the High Court does not entertain matters where there is existence of alternative statutory remedy, more particularly when such alternative remedy is equally efficacious. Certain exceptions are however well recognised in applying the aforesaid general principle. In many cases it has been recognised that if, notwithstanding the existence of any alternative remedy, the matter has been entertained by the High Court and remained pending, it is not just and proper to shut the door and reject such writ petition at the stage of hearing on the ground of availability of alternative remedy. This principle is more applicable when the question involved is a question of law. Moreover, as already indicated, Respondent No.1, who could have decided under Section 40, having himself filed a joint counter affidavit justifying the order passed by Respondent No.2, no useful purpose would be served by driving the petitioner before the very same authority, namely, Respondent No.1, as such an exercise would be an exercise in futility.

24. For the aforesaid reasons, the impugned order passed by Respondent No.2 is quashed and the writ petition is allowed. The petitioner has suffered unnecessarily in view of the erroneous order passed by Respondent No.2. In normal circumstances, the petitioner would have been entitled to costs, particularly when Respondent No.2 has rejected the contention on the basis of untenable conclusion. However, I am desisting from imposing any cost. This order should be complied with within a period of six weeks from the date of receipt of a copy of the order.

Sd/

Asst.Registrar

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Sub Asst.Registrar

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To

1. The District Registrar,
   O/o. Registration,
   Karungalpalayam,
   Erode.

2. The Sub Registrar,
   O/o. Registration, Perundurai
   Erode District.

1 cc to Mr.C. Prakasam, Advocate, SR. 36093
1 cc to the Govt. Pleader, SR. 35985

WP.NO.31278/04

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